

1 Hearing date: Friday, September 13, 2019
2 Hearing time: 9:00 a.m.
3 Judge/Calendar: Hon. James J. Dixon
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7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 TIM EYMAN, *et al.*,

13 Defendants.

NO. 17-2-01546-34

ORDER GRANTING PLAINTIFF
STATE OF WASHINGTON'S MOTION
FOR NON-MONETARY SANCTIONS
AGAINST THE EYMAN
DEFENDANTS

~~PROPOSED~~

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15 THIS MATTER came on for hearing before the Court on Friday, September 13, 2019 on
16 Plaintiff State of Washington's Motion for Non-Monetary Sanctions Against the Eyman
17 Defendants. Plaintiff State of Washington appeared and was represented by Chief Litigation
18 Counsel – Antitrust Division ERIC S. NEWMAN; Defendant Tim Eyman appeared Pro Se; and
19 Defendant Tim Eyman Watchdog for Taxpayers LLC did not appear. The Court reviewed the
20 records and pleadings on file and heard oral argument from the parties.
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22 This Court makes the following findings:

- 23 1. Defendant Tim Eyman and Defendant Tim Eyman Watchdog for Taxpayers, LLC
24 (collectively "the Eyman Defendants") willfully and deliberately violated the
25 discovery rules as well as this Court's oral order dated November 3, 2017, this
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ORDER GRANTING PLAINTIFF STATE
OF WASHINGTON'S MOTION FOR
NON-MONETARY SANCTIONS
AGAINST THE EYMAN DEFENDANTS
[PROPOSED]

1 Court's written order compelling responses to the State's First Interrogatories and
2 Request for Production dated December 8, 2017, this Court's contempt order dated
3 March 2, 2018, and this Court's Order on Recommended Additional Contempt
4 Sanctions dated August 21, 2018. Despite the Court rules requiring responses to the
5 State's first discovery more than two years ago, despite repeated orders from this
6 Court and from the Special Discovery Master, and despite the passage of more than
7 21 months since this Court's first order compelling discovery responses, the Eyman
8 Defendants have still failed to comply with their discovery obligations without
9 reasonable explanation. The Special Discovery Master has heard eight motions to
10 purge contempt and still holds that the Eyman Defendants are in contempt for failing
11 to fully and properly respond to the State's First Interrogatories and Requests for
12 Production. Additionally, on August 2, 2019, this Court adopted a recommendation
13 from the Special Discovery Master holding the Eyman Defendants in contempt for a
14 second time for their failure to comply with the Special Discovery Master's order
15 compelling full and proper responses to the State's Fifth Interrogatories and Requests
16 for Production. The Eyman Defendants remain in contempt from that order as well.
17 Despite all of these orders and \$500 per day in monetary sanctions, the Eyman
18 Defendants have not supplemented their written discovery responses in more than
19 two months.

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23 2. The State's ability to prepare for trial has been substantially and irreparably
24 prejudiced by the Eyman Defendants failure to comply with their discovery
25 obligations. Specifically, the State was forced to conduct all of the depositions and
26 much of its other discovery in this matter without the benefit of the Eyman

1 Defendants' responses, including the depositions of the Eyman Defendants and the
2 other defendants, as well as donors and other witnesses, in which the use of
3 responsive information would have been valuable.

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5 3. This Court has considered and imposed lesser sanctions including imposing more
6 than \$200,000 in monetary sanctions against the Eyman Defendants, to no avail. In
7 the 19 months that the Eyman Defendants have been held in contempt, they have
8 failed to provide the information ordered by the Special Discovery Master and this
9 Court, despite clear instructions on what exactly needed to be provided. Defendant
10 Eyman has failed to take reasonable steps to obtain the information needed to
11 properly respond to discovery, and Defendant Watchdog has done nothing to purge
12 contempt for nearly nine months. The lesser and then increased monetary sanctions
13 imposed by this Court have failed to induce the Eyman Defendants to fully and
14 properly respond to written discovery, despite those responses being more than two
15 years late, and no sufficient alternative sanction has been identified, so the greater
16 sanction of a finding under CR 37(b)(2)(A) is warranted.

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18 For the foregoing reasons, now, therefore, it is hereby ORDERED that:

19 1. Plaintiff State of Washington's Motion for Non-Monetary Sanctions Against the
20 Eyman Defendants is **GRANTED**.

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22 2. As a discovery sanction under CR 37(b)(2)(A), the payments made to Defendant
23 Tim Eyman, totaling \$766,447, as described in the First Declaration of Tony Perkins in support
24 of the State's motion are hereby found to be "contributions" in support of ballot propositions as
25 defined by RCW 42.17A.005 and not gifts. That matter is established for the purposes of this
26 action and requires no further proof by the State.

4. The State's request for attorneys' fees and costs incurred in bringing the State's Motion for Non-Monetary Sanctions Against the Eyman Defendants is **GRANTED**. The State shall submit a separate cost bill for those fees and costs to the Court.

James J. Dixon

PRESENTED BY:
ROBERT W. FERGUSON
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ERIC S. NEWMAN, WSBA #31521
Chief Litigation Counsel, Antitrust Division
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